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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,280	03/26/2004	Juanito B. Calagui	Calagui - 5	2188

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EXAMINER
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OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/811,280

Applicant(s)

CALAGUI, JUANITO B.

Examiner

Esther O. Okezie

Art Unit

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/26/2004
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1, 2, 7,8 are rejected under 35 U.S.C. 102(b) as being anticipated by Dong.
2. Re claims 1 and 7 Dong discloses the device and method including a first device (11), which includes a first stick having a first tip (13); a second device (11) which includes a second stick having a second tip (13); and a third device (fig 4), which includes a first hollow tube (17) in which a spring (17) is located (the hollow tube is a crimped tube forming a spring, col. 2, lines 53-55); wherein the first device is connected to the third device so that the first stick can pivot with respect to the third device; wherein the second device is connected to the third device so that the second stick can pivot with respect to the third device; wherein in a rest state, the spring causes the first stick to be separated from the second stick so that the first tip and the second tip do not contact each other; and wherein the first stick and the second stick can be pressed together into a compressed state, so that the first stick pivots with respect to the third device, the second stick pivots with respect to the third device, the spring is compressed

by the first and second devices, the first tip and the second tip come into contact with each other (col. 2, lines 45-68).

3. Re claim 2 and 8, the third device includes a block portion (fig 4) which is fixed to the hollow tube (17).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4,6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkitny et al.

5. Re claim 1, Perkitny et al discloses a disc handling device comprising a first device (222), which includes a first stick having a first tip (232); a second device (220) which includes a second stick having a second tip (226); and a third device (288,308), which includes a first hollow tube (304) in which a spring (306) is located; wherein the first device is connected to the third device so that the first stick can pivot with respect to the third device; wherein the second device is connected to the third device so that the second stick can pivot with respect to the third device; wherein in a rest state, the spring causes the first stick to be separated from the second stick so that the first tip and the second tip do not contact each other; and wherein the first stick and the second stick can be pressed together into a compressed state, so that the first stick pivots with

respect to the third device, the second stick pivots with respect to the third device, the spring is compressed by the first and second devices,

Perkitny et al does not disclose the first tip and the second tip come into contact with each other. Kaufmann et al discloses a compact disc handling tool in which legs (14,24) have tips (14d,24d) that come into contact in order to grip the disc from within the disc aperture as well as the outer perimeter of the disc (figs 8-16; col. 4, lines 47-51). It would have been obvious to one of ordinary skill in the art to modify the disc handling device of Perkitny et al as taught by Kaufman to allow the tips of the legs (220,222) to come in to contact in order to hold a compact disc at its outer edge or inner aperture.

6. Re claim 2, the third device includes a block portion (288, 308 on housing 212,214) which is fixed to the first hollow tube (304).

7. Re claim 3, the first device includes a second hollow tube (242) connected to a first extension (248) wherein the first stick can be inserted onto the second hollow tube, wherein the first extension can be inserted into a first slot of the block portion (see slots on second housing half 214); wherein the second device includes a third hollow tube (246) connected to a second extension (244); wherein the second stick can be inserted onto the third hollow tube; and wherein the second extension can be inserted into a second slot of the block portion (see slots on second housing half 214 in which arms 220 and 222 operate).

Perkitny et al does not show the extensions inserted into the hollow tubes, but onto the tubes. It would have been obvious to one of ordinary skill in the art to modify

the arrangement of Perkitny et al. to include the extensions within the tube as a matter of design choice.

8. Re claim 4, the block portion includes a first opening (272) through which a first pin (278) can be inserted to connect the first device (220) to the third device and allow the first device to pivot with respect to the third device; and the block portion includes a second opening (294) through which a second pin (292) can be inserted to connect the second device (220) to the third device and allow the first device to pivot with respect to the third device (fig 10).

9. Re claim 6, a container (housing 214,212) for storing the third device.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dong in view of Japanese Patent JP 0925911. Dong discloses a first and second device including a hollow tubes (14), wherein the first stick and second sticks (11) can be inserted into the tubes (see fig 4). Dong does not include fasteners for attaching the sticks to the hollow tubes. Japanese Patent JP 9-25911 teaches chopsticks (1) connected to hollow tubes (containers 2) by fasteners (6). It would have been obvious to one of ordinary skill in the art to modify the chopstick holder of Dong to include fasteners as taught by Patent JP 0925911 in order to further secure the sticks to the hollow tubes.

***Allowable Subject Matter***

Claims 9,10,11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO



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